Sri Seltra Sdn Bhd v Lembaga Lebuhraya Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — APPEAL NO B-01(A)-121–02 OF 2020

HANIPAH FARIKULLAH, AZIZAH NAWAWI AND AHMAD ZAIDI IBRAHIM JJCA

5 AUGUST 2022

Land Law — Acquisition of land — Compensation — Appellant's land acquired by first respondent — Land administrator issued award of compensation — First respondent lodged objection against award in Form N — First respondent paid 75% of award to land administrator and withheld remaining 25pct — Judicial commissioner reduced award to lesser than 75% held by land administrator — Appellant appealed against reduction of award — First respondent cross-appealed for refund of excess sum — Whether first respondent failed to establish prima facie case of excessive compensation — Whether pursuant to s 29A of the Land Acquisition Act 1960 High Court empowered to reduce compensation to more than 25% — Whether first respondent entitled to the refund of excess sum — Whether judicial commissioner had exercised independent judgment in determining adequate compensation — Whether issue regarding development potential of land was question of law and appealable — Whether there was breach of natural justice by judicial commissioner — Federal Constitution art 13(2) — Land Acquisition Act 1960 ss 29A, 31, 38(1) & 49(1)

The present appeal emanated from a dispute regarding the award of compensation ordered by the Pentadbir Tanah Dan Daerah Hulu Langat ('the second respondent') to the appellant for the acquisition of part of the appellant's land by the Lembaga Lebuhraya Malaysia ('the first respondent'). The second respondent had awarded a total sum of RM240,305,083.33 for market value and injurious affection occasioned to the said land. The appellant had accepted the award without protest, but the first respondent was dissatisfied with the award and subsequently lodged an objection in Form N pursuant to s 38(1) of the Land Acquisition Act 1960 ('the LAA'). The matter was then referred to the High Court and in line with s 29A of the LAA, the first respondent had paid RM180,228,812.50 being 75% of the award to the second respondent and withheld the remaining 25% of the award. The land reference was heard before the learned judicial commissioner ('the JC') and at the end of the proceedings, the JC reduced the award to RM166,365,058.05 after considering, inter alia, the fourth comparable used by the Government's valuer ('JPPH') in its valuation report. The appellant's dissatisfaction in this appeal was in relation to the reduction of the amount of award by the JC whereas the first respondent's cross-appeal was filed to vary part of the decision of the JC to the extent that the sum which had been reduced by the learned JC,

which exceeded the sum withheld, amounting to RM13,863,754.45 ('the excess sum') and/or interest thereon, be directed to be refunded by the appellant to the first respondent. The appellant submitted that: (a) the first respondent had failed to establish a prima facie case that the award was excessive based on the first respondent's valuer's report; (b) pursuant to s 29A of the LAA, the High Court was only empowered to reduce the compensation to the amount withheld of 25% as there was no provision in the LAA to order the appellant, who had received 75% of the award to refund part of the 75%; (c) the manner in which the learned JC in re-engaging the assessors after receiving their written opinions regarding the comparable and later concurring with their diametrically different views, departed significantly from the guidelines established by the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 ('Semenyih Jaya') and also contrary to Arahan Amalan 1/2017; (d) the learned JC had failed to consider the question of law and facts regarding the development potential of the said land; and (e) the learned JC's ultimate reliance on JPPH's fourth comparable and adjustments made thereto was in breach of natural justice.

Held, dismissing the appellant's appeal, and allowing the first respondent's cross-appeal with costs:

(1) The burden was on the applicant (the first respondent in the present appeal) to make out a prima facie case for inadequate or excessive award. The test of prima facie was to establish whether the award was inadequate or excessive. It was not to establish the final compensation. Only when the applicant succeeded in establishing a prima facie case of inadequate or excessive award, only then would the respondent (the appellant in the present appeal) be called upon to introduce his evidence. Otherwise, the applicant's case must fail, and the Collector's award should stand. As such, in the present appeal, it was clear that the first respondent's valuation report was only required to establish a prima facie case that the award by the second respondent was inadequate/excessive, while the JC alone (assisted by the assessors) was to determine the ultimate sum of compensation (see paras 35–36).

(2) In her grounds of judgment ('the GOJ'), the learned JC had reminded herself that the first respondent bore the burden of establishing a prima facie case that the award was excessive and unreasonable based on the valuation report filed by the first respondent. In the first respondent's valuation report, the first respondent had proposed the rate of RM570.49psqmt as compensation, whereas the award was based on RM1,300psqmt. As such, the court found that the learned JC had, in making a finding that the award was excessive, accepted that the first respondent valuation report did establish a prima facie case. Based on the above reasons, the court did not agree with the appellant that the first respondent had failed to establish a prima facie case just because the

learned JC had ultimately chosen JPPH's fourth comparable instead of the first respondent's comparable as being a suitable comparable. The learned JC's discretionary power to consider and decide on the comparable should not be fettered (see paras 37–39 & 42–44).

(3) The meaning of adequate compensation was that the affected landowners, whose land had been compulsorily acquired for public purposes, received compensation that was no more or no less than the loss resulting from the compulsory acquisition of their land. The court agreed with the first respondent that the intent and purpose of s 29A of the LAA was that it only acted as a form of security, in order to ensure that there were readily available monies, amounting to at least 25% of the award to be refunded in the event of a reduction of the award, thereby sparing the acquiring authority the inconvenience or difficulty in recovering up to at least 25% of the award. There was nothing in the LAA that limited the amount of adequate compensation to be given to the affected landowner. As such, s 29A of the LAA could not be interpreted to narrow art 13(2) of the Federal Constitution on adequate compensation or to limit the powers of the courts to grant adequate compensation. Therefore, the land reference court had the jurisdiction to reduce the award by more than what was withheld under s 29A of the LAA, ie, 25% of the award (see paras 51 & 54–55).

(4) The learned JC had the jurisdiction to order the refund of the excess sum of RM13,863,754.45 and/or interest to the first respondent under s 31 of the LAA. In view of the decision made by the learned JC that the amount of the award be reduced by RM73,940,025.28, it was clear that the award of the second respondent was made 'in error', and therefore the first respondent was entitled to the refund of the excess sum and/or interest. In addition, the order to refund the excess sum was the natural consequence of the decision of the learned JC in reducing the award. As such, the court did not agree with the submission of the appellant that the first respondent should initiate further legal actions to recoup the excess sum from the appellant. Based on these findings, the court allowed the cross-appeal and ordered that the excess sum together with interest to be refunded to the first respondent within thirty days from the decision of the court (see paras 60–62 & 100–101).

(5) There was nothing in both the *Semenyih Jaya* case and the Arahan Amalan 1/2017 that prohibited the land reference judge from engaging or re-engaging the assessors in a thorough and critical analysis of the comparables, in order to determine the most suitable comparable, bearing in mind that land reference judges were not expert valuers and must always give due deference to the opinions of the assessors, who were the experts in the field of land valuation. In the present appeal, the court found that the learned JC had in fact exercised her independent

judgment in determining the adequate compensation as she had repeatedly reminded herself that she was not bound by the assessors' opinion. As such, the court agreed with the first respondent that the appellant's contention that the learned JC had allowed her judicial discretion to be fettered by the assessors was clearly misconceived and without any legal basis (see paras 73-78).

(6) The Federal Court in Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd [2021] MLJU 883; [2021] 4 MLJ 570 had already decided that the issue of development potential was not a question of law and was therefore, non-appealable in the first place (see para 80).

(7) The court agreed with the first respondent that whilst the ground of appeal in relation to breach of natural justice was posed ostensibly as a question of law, the issues raised therein were, in pith and substance, appeals on the quantum of compensation, ie, on market value/comparable. Therefore, this ground of appeal was nothing more than a 'backdoor attempt' to circumvent s 49(1) of the LAA. In any event, the appellant's complaint herein in relation to the learned JC's ultimate reliance on JPPH's fourth comparable and adjustments made thereto, was misconceived and untenable, as the learned JC was judicially mandated to decide on the best comparable and to make any deductions/adjustments thereto based on the evidence adduced. In addition, the learned JC had given her reasons behind the adjustments upon considering parties' submissions. Premised on the above reasons, the appellant's contention regarding the breach of natural justice by the JC was misconceived (see paras 83-84 & 97-98).

[Bahasa Malaysia summary

Rayuan semasa berpunca daripada pertikaian berhubung pemberian pampasan yang diperintahkan oleh Pentadbiran Tanah Dan Daerah Hulu Langat ('responden kedua') kepada perayu untuk pengambilan sebahagian tanah perayu oleh Lembaga Lebuhraya Malaysia ('responden pertama'). Responden kedua telah memberikan award sejumlah RM240,305,083.33 untuk nilai pasaran tanah tersebut dan 'injurious affection' ke atas tanah tersebut. Perayu telah menerima award tersebut tanpa bantahan, tetapi responden pertama tidak berpuas hati dengan award tersebut dan kemudiannya membuat bantahan dalam Borang N menurut s 38(1) Akta Pengambilan Tanah 1960 ('APT'). Perkara tersebut kemudiannya dirujuk ke Mahkamah Tinggi dan selaras dengan s 29A APT, responden pertama telah membayar RM180,228,812.50 iaitu 75% daripada award kepada responden kedua dan menahan baki 25% daripada award. Rujukan tanah tersebut didengar di hadapan pesuruhjaya kehakiman yang bijaksana ('PK') dan pada akhir prosiding, PK mengurangkan award kepada RM166,365,058.05 selepas mempertimbangkan, antara lain, perbandingan keempat yang digunakan oleh penilai Kerajaan ('JPPH') dalam laporan penilaiannya. Ketidakpuasan hati

perayu dalam rayuan ini adalah berhubung dengan pengurangan jumlah award oleh PK manakala rayuan balas responden pertama telah difailkan untuk mengubah sebahagian daripada keputusan PK iaitu supaya jumlah yang telah dikurangkan oleh PK yang bijaksana, yang melebihi jumlah yang ditahan, berjumlah RM13,863,754.45 ('jumlah lebihan') dan/atau faedah ke atasnya, diarahkan untuk dipulangkan oleh perayu kepada responden pertama. Perayu menghujahkan bahawa: (a) responden pertama telah gagal membuktikan kes prima facie bahawa award tersebut adalah berlebihan berdasarkan laporan penilai responden pertama; (b) menurut s 29A APT, Mahkamah Tinggi hanya diberi kuasa untuk mengurangkan pampasan kepada jumlah yang ditahan sebanyak 25% kerana tiada peruntukan dalam APT untuk memerintahkan perayu, yang telah menerima 75% daripada award untuk membayar balik sebahagian daripada jumlah 75% tersebut; (c) tindakan PK yang bijaksana dalam melibatkan semula penilai selepas menerima pendapat bertulis mereka mengenai perbandingan tersebut dan kemudiannya bersetuju pula dengan pandangan mereka yang berbeza secara diametrik, menyimpang dengan ketara daripada garis panduan yang ditetapkan oleh kes *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 ('Semenyih Jaya') dan juga bertentangan dengan Arahan Amalan 1/2017; (d) PK yang bijaksana telah gagal mempertimbangkan persoalan undang-undang dan fakta mengenai potensi pembangunan tanah tersebut; dan (e) kebergantungan muktamad PK yang bijaksana pada perbandingan keempat JPPH dan pelarasan yang dibuat terhadapnya adalah melanggar keadilan semula jadi.

Diputuskan, menolak rayuan perayu dan membenarkan rayuan balas responden pertama dengan kos:

(1) Beban terletak pada pemohon (responden pertama dalam rayuan semasa) untuk membuktikan kes prima facie berkaitan award yang tidak mencukupi atau award yang berlebihan. Ujian prima facie adalah untuk menentukan sama ada award tersebut tidak mencukupi atau berlebihan. Ia bukan untuk menentukan pampasan terakhir. Hanya apabila pemohon berjaya membuktikan kes prima facie bagi award tidak mencukupi atau berlebihan, barulah responden (perayu dalam rayuan semasa) akan dipanggil untuk mengemukakan keterangannya. Jika tidak, kes pemohon harus gagal, dan award 'Collector' harus kekal. Oleh itu, dalam rayuan ini, adalah jelas bahawa laporan penilaian responden pertama hanya diperlukan untuk membuktikan kes prima facie bahawa award oleh responden kedua adalah tidak mencukupi/berlebihan, manakala PK sahaja (dibantu oleh penilai-penilai) bertanggungjawab untuk menentukan jumlah pampasan muktamad (lihat perenggan 35 & 36).

(2) Dalam alasan penghakimannya ('AP'), PK yang bijaksana telah mengingatkan dirinya bahawa responden pertama memikul beban

untuk membuktikan kes prima facie bahawa award tersebut adalah berlebihan dan tidak munasabah berdasarkan laporan penilaian yang difailkan oleh responden pertama. Dalam laporan penilaian responden pertama, responden pertama telah mencadangkan kadar RM570.49 setiap meter persegi sebagai pampasan, manakala award tersebut adalah berdasarkan RM1,300 setiap meter persegi. Oleh itu, mahkamah mendapati bahawa PK yang bijaksana dalam membuat keputusan bahawa award tersebut adalah berlebihan telah menerima bahawa laporan penilaian responden pertama telah membuktikan kes prima facie. Berdasarkan alasan-alasan di atas, mahkamah tidak bersetuju dengan perayu bahawa responden pertama telah gagal untuk membuktikan kes prima facie hanya kerana PK yang bijaksana akhirnya memilih perbandingan keempat JPPH dan bukannya perbandingan responden pertama sebagai perbandingan yang sesuai. Kuasa budi bicara PK yang bijaksana untuk mempertimbangkan dan memutuskan berkenaan perbandingan tersebut tidak harus disekat (lihat perenggan 37-39 & 42-44).

(3) Maksud pampasan yang mencukupi ialah pemilik tanah yang terjejas, yang tanahnya telah diambil secara paksa untuk tujuan awam, menerima pampasan yang tidak lebih atau tidak kurang daripada kerugian akibat pengambilan paksa tanah mereka. Mahkamah bersetuju dengan responden pertama bahawa niat dan tujuan s 29A APT adalah bahawa ia hanya bertindak sebagai satu bentuk keselamatan, untuk memastikan bahawa terdapat wang yang sedia ada, berjumlah sekurang-kurangnya 25% daripada award yang boleh dikembalikan sekiranya award dikurangkan bagi mengelakkan pihak berkuasa yang membuat pengambilan daripada menghadapi kesulitan atau kesukaran untuk mendapatkan semula sekurang-kurangnya 25% daripada award. Tiada apa-apa dalam APT yang mengehadkan jumlah pampasan yang mencukupi untuk diberikan kepada pemilik tanah yang terjejas. Oleh itu, s 29A APT tidak boleh ditafsirkan untuk mempersempitkan perkara 13(2) Perlembagaan Persekutuan mengenai pampasan yang mencukupi atau untuk mengehadkan kuasa mahkamah untuk memberikan pampasan yang mencukupi. Oleh itu, mahkamah rujukan tanah mempunyai bidang kuasa untuk mengurangkan award lebih daripada apa yang telah ditahan di bawah s 29A APT, iaitu, 25% daripada award (lihat perenggan 51 &54-55).

(4) Pesuruhjaya kehakiman yang bijaksana mempunyai bidang kuasa untuk memerintahkan pemulangan wang lebihan sebanyak RM13,863,754.45 dan/atau faedah kepada responden pertama di bawah s 31 APT. Memandangkan keputusan yang dibuat oleh PK yang bijaksana bahawa jumlah award dikurangkan sebanyak RM73,940,025.28, adalah jelas bahawa award yang diberikan oleh responden kedua dibuat 'dalam kekhilafan', dan oleh itu responden pertama berhak mendapat bayaran

balik lebihan jumlah dan/atau faedah tersebut. Di samping itu, perintah untuk membayar balik jumlah lebihan wang tersebut adalah kesan semula jadi daripada keputusan PK yang bijaksana dalam mengurangkan award tersebut. Oleh yang demikian, mahkamah tidak bersetuju dengan hujahan perayu bahawa responden pertama perlu memulakan tindakan undang-undang yang baru untuk mendapatkan balik lebihan wang daripada perayu. Berdasarkan dapatan-dapatan ini, mahkamah membenarkan rayuan balas dan memerintahkan supaya jumlah lebihan berserta faedah dipulangkan kepada responden pertama dalam tempoh tiga puluh hari dari keputusan mahkamah (lihat perenggan 60-62 & 100-101).

(5) Tidak ada apa-apa dalam kedua-dua kes *Semenyih Jaya* dan Arahan Amalan 1/2017 yang melarang hakim dalam kes rujukan tanah daripada melibatkan atau melibatkan semula penilai-penilai dalam analisis yang teliti dan kritikal bagi perbandingan, untuk menentukan perbandingan yang paling sesuai, dengan mengambil kira bahawa hakim rujukan tanah bukanlah penilai pakar dan mesti sentiasa memberi penghormatan yang sewajarnya kepada pendapat penilai-penilai, yang merupakan pakar dalam bidang penilaian tanah. Dalam rayuan ini, mahkamah mendapati bahawa PK yang bijaksana sebenarnya telah menggunakan pertimbangan bebasnya dalam menentukan pampasan yang mencukupi kerana dia telah berulang kali mengingatkan dirinya bahawa dia tidak terikat dengan pendapat penilai-penilai tersebut. Oleh yang demikian, mahkamah bersetuju dengan responden pertama bahawa dakwaan perayu bahawa PK yang bijaksana telah membenarkan budi bicara kehakimannya disekat oleh penilai-penilai tersebut adalah jelas salah sangka dan tanpa apa-apa asas undang-undang (lihat perenggan 73-78).

(6) Mahkamah Persekutuan dalam kes Pentadbiran Tanah Daerah Johor v Nusantara Daya Sdn Bhd [2021] MLJU 883; [2021] 4 MLJ 570 telah pun memutuskan bahawa isu potensi pembangunan bukan persoalan undang-undang dan oleh itu, tidak boleh dirayu sejak awal lagi (lihat perenggan 80).

(7) Mahkamah bersetuju dengan responden pertama bahawa walaupun alasan rayuan berhubung dengan pelanggaran keadilan semula jadi ditimbulkan kononnya sebagai persoalan undang-undang, isu yang dibangkitkan di dalamnya adalah, pada intipatinya, rayuan ke atas kuantum pampasan, ie, pada nilai pasaran/perbandingan. Oleh itu, alasan rayuan ini tidak lebih daripada 'backdoor attempt' untuk memintas s 49(1) APT. Dalam apa jua keadaan, aduan perayu di sini berhubung dengan kebergantungan muktamad PK yang bijaksana pada perbandingan keempat JPPH dan pelarasan yang dibuat kepadanya, adalah salah faham dan tidak boleh dipertahankan, kerana PK yang bijaksana telah diberi mandat kehakiman untuk membuat keputusan

berkenaan perbandingan yang terbaik dan membuat apa-apa potongan/pelarasan berdasarkan keterangan yang dikemukakan. Di samping itu, PK yang bijaksana telah memberikan alasan-alasan di sebalik pelarasan tersebut setelah mempertimbangkan hujahan pihak-pihak. Berdasarkan alasan-alasan di atas, pertikaian perayu berhubung pelanggaran keadilan semula jadi oleh PK adalah salah sangka (lihat perenggan 83-84 & 97-98).]

Cases referred to

Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat [2021] 4 MLJ 1; [2021] 3 CLJ 1, FC (refd)

A Karunathan Arunasalam & Ors v Pentadbir Tanah Daerah Petaling & Another [2011] 7 CLJ 130, CA (distd)

Collector of Land Revenue v Alagappa Chettiar [1971] 1 MLJ 43, PC (refd)

Emasin Resources Sdn Bhd v Pentadbir Tanah Port Dickson [2018] 4 MLJ 816, CA (refd)

Malacca Malay Guru2 Co-operative Thrift & Loan Society Ltd v Tan Mei Hua & Ors [1971] 1 MLJ 107, CA (refd)

Ong Yan & Anor v Collector of Land Revenue, Alor Gajah, Malacca [1986] 1 MLJ 405; [1985] 1 LNS 105 (refd)

Pengerang Farm Sdn Bhd v Pentadbir Tanah Daerah Kota Tinggi [2017] MLJU 214; [2017] 1 LNS 66, CA (refd)

Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd [2021] MLJU 883; [2021] 7 CLJ 1, FC (refd)

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 4 MLRA 554; [2017] 5 CLJ 526, FC (distd)

Teguh Kemajuan Sdn Bhd v Pentadbir Tanah Daerah Kota Tinggi & Anor and other appeals [2021] 3 MLJ 141, CA (refd)

Yakin Tenggara Sdn Bhd v RHB Bank Bhd & Ors and other appeals [2017] 2 MLJ 774, CA (refd)

Legislation referred to

Federal Constitution art 13(2)

Land Acquisition Act 1960 ss 29A, 29A(1), (3), 31, 37, 38(1), 40D(3), 49(1), First Schedule, para 1(2BA), Second Schedule, Forms H, N, Third Schedule, paras 2(1), 2(3)

Appeal from: *Lembaga Lebuhraya Malaysia v Pentadbir Tanah Daerah Hulu Langat & Anor* [2020] MLJU 818 (High Court, Shah Alam)

Gurdial Singh Nijar (with Yatiswara Ramachandran, Kenny Chan Yew Hoong and Abraham Au Tian Hui) (Yatiswara, Ng & Chan) for the appellant.

Kok Su Ann (with Tee Vun Xin, Isabella Cheah Chooi Mun and Alif Ridhwan bin Mohd Yusof) (Hisham Sobri & Kadir) for the first respondent.

Nur Irmawatie bt Daud (with Etty Eliany bt Tesno and Muhammad Haziq bin Hashim) (Selangor State Legal Advisor Office) for the second respondent.

Azizah Nawawi JCA:

INTRODUCTION

[1] This is an appeal filed by the appellant, Sri Seltra Sdn Bhd against the whole of the decision of the learned judicial commissioner ('JC') dated 6 February 2020 in the matter of the Shah Alam High Court Land Reference No BA-15–158–06 of 2018 ('the decision').

[2] The first respondent, Lembaga Lebuhraya Malaysia has filed a cross-appeal by way of a notice of cross-appeal dated 21 August 2020 ('the cross-appeal'), seeking to have part of the decision varied, to the extent that the sum which had been reduced by the learned JC, which exceeds the sum withheld, amounting to RM13,863,754.45 ('excess sum') and/or interest thereon, be directed to be refunded by the appellant to the first respondent.

[3] Having considered the appeal records and the submissions of the parties, this court had dismissed the appeal and allowed the cross-appeal with costs. Our decision was unanimous and these are the grounds for our decision.

THE SALIENT FACTS

[4] The appellant is the registered proprietor of a parcel of land held under Lot 43255, PN 17354, Mukim Ampang, Daerah Ulu Langat ('the said land'). The said land is subject to a lease of 99 years, expiring on 21 December 2096.

[5] Part of the said land, about 173,284.27 square meters, was acquired for the purposes of 'Projek Lebuhraya Bertingkat Sungai Besi — Ulu Kelang (SUKE) ('said project') vide the Selangor Government *Gazette* No 4810 dated 9 December 2016. It is not in dispute that the relevant date for valuation of the said land is 9 December 2016.

[6] On 24 May 2017, an inquiry was held by the second respondent, Pentadbir Tanah Dan Daerah Hulu Langat ('PTG') in respect of the acquisition of part of the said land ('the inquiry'). The PTG then made an award of compensation for market value and injurious affection occasioned to the said land amounting to a total sum of RM240,305,083.33, vide the notice of award and offer of compensation in Form H dated 24 May 2017 ('the award').

[7] Whilst the appellant had accepted the award without protest, the first respondent, being the acquiring authority for the said project, lodged an objection in Form N dated 19 June 2017 against the award ('said objection'), which was thereafter referred to the Shah Alam High Court.

[8] In light of the said objection, and pursuant to s 29A(1) of the Land Acquisition Act 1960 ('the LAA'), the first respondent paid to the appellant, through the PTG, the sum of RM180,228,812.50, being 75% of the award, on 13 July 2017.

[9] The sum of approximately RM60,076,270.83, equivalent to 25% of the award, has been withheld until the matter of compensation is fully determined by the High Court.

[10] On or about 13 August 2018, the appellant filed a notice of application, inter alia, to be added as a party to the land reference, which was dismissed by the High Court. On 19 July 2019, the Court of Appeal had recorded a consent order to allow the appellant to be added as the second respondent in the land reference proceedings.

[11] On 6 February 2020, the land reference was heard before the learned JC and the learned JC decided that the adequate compensation for the acquisition of the said land is RM166,365,058.05 only and as such, directed that the award be reduced by RM73,940,025.2817.

[12] The appellant is now appealing against the reduction of the award, whilst the first respondent is seeking a refund of the excess sum in the cross-appeal.

THE DECISION OF THE HIGH COURT

[13] The learned JC provided a summary of the parties' assessment of the market value of the said land and was of the opinion that there is a very wide disparity between the appellant's and the first respondent's valuers' assessment:

LLM valuation report	Government/JPPH valuation report	Sri Seltra valuation report	Award by PTG
173,284.278sqmt	173,284.278sqmt	173,284.278sqmt	173,284.278sqmt
at RM570.49	at RM1300	at RM1453.14	at RM1300
psm/RM53 psf	psm/RM120 psf	psm/RM135 psf	psm/RM120 psf
=	=	=	=
RM98,856,948	RM225,269,561.40	RM251,806,315.73	RM225,269,561.40

[14] The learned JC also took note that from the reports prepared by the assessors who were assisting her in the land reference proceedings, both the Government assessor and the private assessor were unanimous in their opinion that the calculation of the fair and reasonable amount of compensation prepared by the Government and the appellant's valuers were excessive and not reasonable or suited for the said land.

[15] However, both assessors chose different comparables which they thought were more suitable as comparison for the assessment in arriving at a fair and reasonable amount of compensation for the said land. The Government assessor was of the opinion that the first respondent's first comparable was more suitable for use and after making some adjustments, she suggested the compensation to be RM600psqmt.

[16] On the other hand, the private assessor was of the opinion that the first respondent/applicant's valuation was too low and that the appellant's valuation was too high. She then came to an opinion that she preferred the first comparable used in the first respondent valuation report and stated that the market value of the said land was RM711.70psqmt.

[17] Having scrutinised both the Government and private assessors' reports, the learned JC agreed with their opinion that the assessments for the market value of the said land were excessive, bearing in mind its peculiar characteristics and that none of the comparables used by the appellant and the first respondent matched perfectly in every aspect to that of the said land.

[18] The learned JC then engaged the assessors in discussion and critical analysis in order to ascertain the best comparable to be used to assess and calculate the amount that would best reflect the market value of the said land. The learned JC then decided that she agreed with the unanimous joint opinion of the assessors that the closest and most suitable comparable to reflect the market value of the said land was the fourth/fourth comparable (Lot 43376, Mukim Ampang, Daerah Hulu Langat) used by JPPH.

[19] There was also adjustment made based on the size and terrain of the said land. The final sum was fixed at RM900psqmt, totalling RM155,955,850.20. The sum for injurious affection was maintained at RM10,409,207.85. Therefore, the total compensation for the acquisition of the said land is RM166,365,058.05 and the award was reduced by RM73,940,025.2817.

OUR DECISION

[20] It is a common ground that an appeal against the award of the land reference court is only on questions of law, whilst the quantum of

compensation awarded is not appealable. This is based on sub-s 40D(3) read with sub-s 49(1) of the LAA, which reads as follows:

> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

Subsection 49(1) of the LAA reads as follows:

> (1) Any person interested, including the land administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that *where the decision comprises an award of compensation there shall be no appeal therefrom*. (Emphasis added..)

[21] In *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 4 MLRA 554; [2017] 5 CLJ 526 the Federal Court stated as follows:

> [155] To sum up, the proviso to sub-s 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. *Instead the bar to appeal in sub-s 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore an aggrieved party has the right to appeal against the decision of the High Court on questions of law.* (Emphasis added.)

[22] In the present appeal, the appellant had submitted the following questions of law for this court's consideration (as set out in the memorandum of appeal):

(a) whether in accordance with para 2(1) of the Third Schedule to the LAA, an applicant's (LLM) valuer's report can be said to have sufficiently established a prima facie case independently by themselves to challenge the land administrator's award when all of the comparable exhibited in the said report were rejected by the land reference court;

(b) whether in accordance with para 2(1) of the Third Schedule to the LAA, an applicant's valuer's reports can be said to have sufficiently established a prima facie case independently by themselves to challenge the land administrator's award when the valuation/proposed market rate in the said reports was rejected and, in any event, was vastly at variance with what was ultimately awarded by the land reference court;

(c) if questions (a) and (b) are answered in the negative, whether the land reference proceeding in the present case ought to have been dismissed without further consideration pursuant to para 2(1) of the Third Schedule to the LAA, with the consequence that the land administrator's award would stand;

(d) whether the High Court in land reference proceedings is only

empowered under s 29A of the LAA, including in particular sub-s 29A(3), to reduce the amount of compensation awarded from the amount withheld and not from any other amount paid out to the landowner whose land was acquired;

(e) whether on the factual matrix presented by this case, an applicant seeking more than the amount withheld by the second respondent pursuant to s 29A of the LAA ought to have instead proceeded by seeking judicial review of the second respondent's decision;

(f) whether in compliance with the requirements in the case of *Semenyih Jaya* and Practice Direction No 1/2017, if the judge in land reference proceedings does not accept the opinion of the Government and private assessors, the judge must then make an independent valuation of the market value of the subject property without further regard to the views of the said assessors;

(g) if the answer to question (f) is in the affirmative, whether the act of a judge in land reference proceedings in adopting a 'mediated' outcome of the assessors' conflicting opinions, rather than an independent assessment of the said judge, amounts to a wrongful departure from the principles in *Semenyih Jaya* and Practice Direction No 1/2017;

(h) whether in accordance with para 1(2BA) of the First Schedule of the LAA and/or the principle of equivalence as established by the Federal Court in *Semenyih Jaya*, the court in land reference proceedings ought to give adequate consideration and credence to the development potential of the subject land, in particularly the land's status, zoning and category of land use under the relevant development plans and/or planning laws and assess the market value of the subject land accordingly;

(i) whether in view of para 2(3) of the Third Schedule to the LAA, a respondent landowner in land reference proceedings is obliged to adduce evidence to rebut the evidence of the applicant's valuer's report only, and not any other reports;

(j) if the answer to question (i) above is in the affirmative, whether a respondent landowner in land reference proceedings must be given a right to be heard and/or an opportunity to comment if the court decides to accept a comparable from a valuation report other than that of the applicant's valuer;

(k) if the answer to question (j) above is in the affirmative, whether the failure to give an opportunity to a party to comment on a report that adversely affects its interests renders the decision of the judge void; and

(l) whether a judge's unexplained contradiction in her assessment of a subject property's valuation in land reference proceedings amounts to an error of law justifying appellate intervention.

[23] In their written submission, the appellant has grouped the above questions of law under the following headings:

(i) issue of establishing a prima facie case (questions (a), (b) and (c));

(ii) issue of s 29A of the LAA (questions (d) and (e));

(iii) issue of procedural impropriety (questions (f) and (g));

(iv) issue of development potential (question (h)); and

(v) issue of breach of natural justice (questions (i), (j) and (k)).

Issue (i): Establishing a prima facie case

[24] It is the submission of the appellant that under the LAA, there are specific procedures that govern proceedings in a specially constituted land reference court pursuant to s 37 of the LAA, as set out in the Third Schedule to the LAA. These procedures encapsulate not only procedural rules but also evidential rules that must be strictly followed. Therefore, in the proceedings before the land reference court, not only did the Third Schedule require the applicant's valuer's report to establish a prima facie case, such intention of Parliament in para 2(1) to the Third Schedule of the LAA is further made clear with the operative word 'alone':

> 2 Valuer's report and oral evidence
>
> (1) The applicant's valuers report alone must establish a prima facie case for the applicant.

[25] The appellant submits that the valuer's report of the applicant/first respondent (ie LLM), is the sole criteria in the determination as to whether there was a prima facie case in favour of the first respondent. The burden of proof to establish a case on its own is on the first respondent, based on its valuer's report, without relying on the evidence of any other party in the proceedings.

[26] In the present appeal, the appellant submits that the first respondent, being the applicant in the land reference proceedings, has failed to establish a prima facie case when the learned JC, whilst agreeing in principle with the assessors that the award was excessive, she nevertheless disagreed with both assessors of their preferences for the first respondent's comparables and instead found that 'none of the comparables used by the applicant (LLM) and the respondent matched perfectly in every aspect' to that of the said land.

[27] As such, the appellant submits that at this juncture, the learned JC should have dismissed the first respondent's reference *in limine* as the first respondent had not adduced sufficient evidence to independently establish its

case as to the proper market value of the said land.

[28] The appellant further submits that when the learned JC, together with the assessors, had ultimately chosen JPPH's fourth comparable as the best and closest in comparison to the said land, it is therefore clear that the court had rejected all of the first respondent's comparables as being a suitable comparable. As such, the first respondent had failed to establish a prima facie case based on its valuer's report.

[29] The LAA is a special act relating to the acquisition of land, the assessment of compensation to be made on account of such acquisition, and matters incidental thereto. The provisions of the LAA make it clear that the lodging of Form N is essential if a party seeks to object to an award in a land reference proceedings. If the Form N is filed by the owner of the property who is not satisfied with the amount of compensation, then the power to scrutinise the award is confined to whether the award was inadequately compensated. Likewise, if the Form N is filed by the paymaster who is not satisfied with the amount of compensation, then the power to scrutinise the award is confined to whether the award was excessive or overcompensated. Therefore, the Form N sets out the 'terms of reference' of the court to examine the applicant's objection raised.

[30] In the present appeal, the first respondent/applicant was dissatisfied with the award and has filed an objection in Form N requiring the PTG to refer the matter to the High Court for a determination as provided under s 38(1) of the LAA. The reasons stated in Form N are twofold:

(a) that the award is excessive and above the actual market value of the acquired land and is not in keeping with the usual principles of assessing the market value of the acquired land according to the provisions of the LAA; and

(b) that the 5% awarded for injurious affection is excessive keeping in view the part of the land not acquired is still economical for development.

[31] The learned JC made a finding that since there was no strong opposition to the award by the land administrator for injurious affection, the learned JC had accepted and affirmed the award by the land administrator's determination that compensation for injurious affection should be valued at 5% of the value of the scheduled land. The court was therefore confined its decision only with regard to the appeal against the amount of compensation awarded.

[32] Therefore, since the first respondent is challenging the award on the basis that the award is excessive, the onus is on the first respondent to establish a prima facie case that the award is excessive based on its valuer's report.

[33] It is trite law that in a land reference proceeding, it is incumbent on the applicant to make out a prima facie case of inadequate award. In the case of *Ong Yan & Anor v Collector of Land Revenue, Alor Gajah, Malacca* [1986] 1 MLJ 405 at p 407; [1985] 1 LNS 105, it was held as follows:

> In land acquisition cases the *burden is on the applicant to make out a prima facie case of inadequate award.* Only when he succeeds in doing so would the respondent be called upon to introduce his evidence; otherwise the applicant's case must fail and the Collector's award should stand.
>
> ... The *findings of an expert valuer, though based on mere opinion of the value of the land constitute a prima facie case*, provided of course sound reasons are given for such opinion. It will then be open to the Collector to challenge this opinion by producing more persuasive proof on comparative sale of lands in the same neighbourhood. (Emphasis added.)

[34] The same position was taken by the Privy Council in *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43, where the Privy Council held at p 44:

> The onus lies upon the applicant to satisfy the court by evidence that the amount of compensation awarded is inadequate ...

[35] Therefore, the burden is on the applicant to make out a prima facie case for inadequate or excessive award. The test of prima facie is to establish whether the award is inadequate or excessive. It is not to establish the final compensation that is to be awarded. Only when the applicant succeeds in establishing a prima facie case of inadequate or excessive award, only then would the respondent be called upon to introduce his evidence. Otherwise, the applicant's case must fail, and the Collector's award should stand.

[36] As such, in the present appeal, it is clear that the first respondent/LLM's valuation report is only required to establish a prima facie case that the award by the PTG /second respondent was inadequate/excessive, while the judge alone (assisted by the assessors) is to determine the ultimate sum of compensation.

[37] In her GOJ, the learned JC had reminded herself that the first respondent bore the burden of establishing a prima facie case that the award was excessive and unreasonable based on the valuation report filed by the first respondent. The learned JC said this in the GOJ:

I reminded myself during this proceedings that it is the applicant who bears the burden of establishing a prima facie case that the land administrator's compensation is excessive and unreasonable. have been guided by the decision pronounced in the case of *Ong Yan & Anor v Collector of Land Revenue Alor Gajah Malacca* [1986] 1 MLJ 405; [1985] 1 LNS 105.

[38] In the first respondent's valuation report, the first respondent had proposed the rate of RM570.49psqmt as compensation, whereas the award is based on RM1,300psqmt. As such, we are of the considered opinion that the learned JC had, in making a finding that the award was excessive, accepted that the first respondent valuation report did establish a prima facie case. In this regard, the learned JC made the following findings:

... I agree with both the assessors' opinion that the award of RM1,300psqmt is excessive and unreasonable and that it should be reduced but to how much.

[39] Therefore, based on the reasons enumerated above, we do not agree with the appellant that the first respondent has failed to establish a prima facie case just because the learned JC had ultimately chosen JPPH's fourth comparable instead of the first respondent's comparable as being a suitable comparable.

[40] The appellant's reliance on the case of *A Karunathan Arunasalam & Ors v Pentadbir Tanah Daerah Petaling & Another* [2011] 7 CLJ 130 to establish the principle that the onus is on the first respondent/applicant to establish a prima facie case based on the valuer's report alone is also misplaced. We are of the considered opinion that this case is clearly distinguishable from the present appeal, as in that case the trial judge had rejected the applicant's valuation report, and thus the Court of Appeal held that the appellant had failed to establish a prima facie case. At p 144, the Court of Appeal in *A Karunathan Arunasalam* held as follows:

Since there has been no evidence adduced that would establish a prima facie claim in favour of the applicant... arising from the failure of the appellants to establish a prima facie case the court has to accept the quantum of compensation as awarded by the land administrator ... (Emphasis added.)

[41] In *Pengerang Farm Sdn Bhd v Pentadbir Tanah Daerah Kota Tinggi* [2017] MLJU 214; [2017] 1 LNS 66, this court held that the LAA qualifies the applicant's evidential burden to the effect that a prima facie case can only be established through the applicant's valuer's report. Once this evidential burden of proof has been discharged by the applicant, then the evidential burden shifts to the respondent. If that party fails to discharge the initial burden of proof, then the other party need not adduce any evidence. The court held as follows:

[8] ... As the main thrust of the appellant's argument relates to para 2 of the Third

Schedule, it is pertinent to reproduce para 2 below:

> 2 Valuer's report and oral evidence
>
> (1) The applicant's valuer's report alone must establish a prima facie case for the applicant ...

[9] In our view, the language of sub-para 2(1) is quite clear and unambiguous. *It states that the applicant must produce a valuer's report in order to establish a prima facie case. In other words, it places the burden of establishing a prima facie case on the applicant. It also sets out the only manner in which the burden is to be discharged — by the production of the applicant's valuer's report* sans oral evidence. The oral evidence of the applicant's valuer is only admissible if there is any cross-examination or re-examination (see para 2(2) of the Third Schedule).

...

[13] ... Whether or not the applicant's valuer's report establishes a prima facie case is a matter for the court to consider and determine. (Emphasis added.)

[42] In the present case, we find that the learned JC had, in making a finding that the award was excessive after perusing the first respondent's valuation report, accepted that the said report did establish a prima facie case. Thereafter, the learned JC had engaged the assessors in assessing the final market value-add reduced the market value awarded from RM1,300psqmt to RM900psqmt. This had conclusively established that the award was indeed excessive.

[43] In such a situation, there is nothing to prevent the learned JC from ultimately relying on JPPH's valuation report/fourth comparable (with due adjustments) to determine the compensation. In *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd* [2021] MLJU 883; [2021] 7 CLJ 1, the Federal Court restored the High Court's decision, wherein the High Court increased the award of compensation in favour of the respondent landowner despite having rejected all the comparables relied on by the landowner's valuer, and adopted the Government's comparable as the best comparable. The Federal Court then held as follows:

> [89] ... *para 2(1) of the Third Schedule provides that the valuation report of the respondent 'alone must establish a prima facie case for the applicant. This, however, does not prevent the High Court from using the Government valuer's report to determine compensation*. In doing so, adjustments for the 'allowances for all the circumstances' must nevertheless be made against comparable 1 even though it was agreed by the learned judge and the assessors to be the best comparable. (Emphasis added.)

[44] Added to that, we agree with the first respondent that the learned JC's discretionary power to consider and decide on the comparables, should not be fettered. In *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1; [2021] 3 CLJ

A 1, the Federal Court held:

> [55] ... Similarly, *the judge is vested with the discretionary power to consider and decide on the comparable(s) most suited for this exercise.* We do not think that it is for this court to exercise our judgment on this matter and direct the assessors and the judge to assess the market value of the subject lands on the basis of both sale and acquisition comparables; that would amount to a fetter on their independence and impartiality. *Ultimately, this is a matter which falls to be decided by the assessors and the judge. The ultimate decision is that of the judge and him alone*. (Emphasis added.)

[45] In this regard, we refer to the case of *Collector of Land Revenue v Alagappa Chettiar* where Lord Diplock (p 44 (MLJ)) said:

> ... The judge, with the assistance of the advice proffered to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him ...

Issue (ii): Section 29A of the LAA

[46] On this issue, the appellant's question of law in para (d) reads as follows:

> Whether *the High Court in land reference proceedings is only empowered under s 29A of the LAA, including in particular sub-s 29A(3), to reduce the amount of compensation awarded from the amount withheld* and not from any other amount paid out to the landowner whose land was acquired. (Emphasis added..)

[47] Essentially the appellant is submitting that pursuant to s 29A of the LAA, the High Court is only empowered to reduce the compensation to the amount withheld of 25% as there is no provision in the LAA to order the appellant, who had received 75% of the award to refund part of the 75%.

[48] Section 29A reads as follows:

> 29A Withholding of twenty-five per cent of compensation
>
> (1) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit, then, notwithstanding section 29, the land administrator shall, subject to sub-section (2), make payment of only seventy-five per cent of the amount of the award, and shall withhold twenty-five per cent thereof until the amount of compensation is finally determined either by the Court under section 47 or, if there is an appeal or further appeal pursuant to section 49, on the appeal or further appeal, under the following circumstances —
>
> (a) before the expiry of six weeks from the date of service of Form H on the Government, person or corporation on whose behalf such land was acquired; or
>
> (b) if before the expiry of the said period such Government, person or

corporation has made an objection under section 37 to the amount of compensation or any other objection which may affect such amount.

(2) If within the period specified in paragraph (1)(a) no such objection as is referred to in para (b) of that sub-section is made, then, as soon as may be after the expiry of that period, the land administrator shall make to the person entitled thereto payment of the amount withheld under paragraph (a) of that sub-section.

(3) If such final determination results in a reduction of the amount of compensation, the amount withheld or so much thereof as equals the amount of the reduction, as the case may be, shall become free of all claims in respect of the compensation, and the remainder, if any, shall, as soon as may be, be paid to the person entitled there to.

(4) If such final determination does not result in a reduction of the amount of compensation, the amount withheld shall, as soon as may be, be paid to the person entitled there to.

[49] We are of the considered opinion and we agree with the first respondent that this issue raises the following considerations:

(a) whether the land reference court has the jurisdiction to reduce the award by more than what was withheld under s 29A of the LAA, ie 25% of the award; and

(b) if question (a) above is answered in the affirmative, whether the land reference court has the jurisdiction to direct that the amount reduced which exceeds the sum withheld, ie the excess sum and/or interest thereon be refunded by the appellant to the first respondent.

[50] On the issue of jurisdiction in para (a), reference must be made to art 13(2) of the Federal Constitution, which provides for adequate compensation due to compulsory acquisition of a person's land. The term 'adequate compensation' was held by the Federal Court in *Semenyih Jaya* to be as follows:

> [198] But what is adequate compensation for a person who has been deprived of his or her property? The term '*adequate compensation*' is not defined in the Act. In *Pentadbir Tanah Daerah Gombak lwn Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 282, the Supreme Court held that '*the basic principle governing compensation is that the sum awarded should, as far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired*' (see *Compulsory Acquisition and Compensation* by Sir Frederick Corfield QC and RJA Carnwath).
>
> [199] The above principle is known as the principle of equivalence. By this principle, *the affected land owners and occupants are entitled to be compensated fairly for their loss. But they should receive compensation that is no more or no less than the loss*

resulting from the compulsory acquisition of their land. (Emphasis added.)

[51] Therefore, adequate compensation simply means that the affected landowners, whose land have been compulsorily acquired for public purposes, receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land. There is nothing in the LAA that limits the amount of adequate compensation to be given to the affected landowner. As such, s 29A cannot be interpreted to narrow art 13(2) of the Federal Constitution on adequate compensation or to limit the powers of the courts to grant adequate compensation.

[52] Section 29A was inserted into the LAA by way of s 3 of the Land Acquisition (Amendment) Act 1976 which came into force on 27 February 1976. In essence, it provides for the retention of 25% of the award until the amount of adequate compensation is finally determined by the land reference court or on further appeal.

[53] The reasons behind the enactment of s 29A are elucidated in the bill for the Land Acquisition (Amendment) Act 1975, as explained in para 3 of the Explanatory Statement of Bill 1975 tabled in Parliament on 2 December 1975:

> The new s 29A (clause 3) requires the Collector to withhold payment of twenty-five per cent of the amount of an award so that *if the Government, person or corporation on whose behalf any land is acquired objects to the amount of the award and succeeds in the objection, such Government, person or corporation will be spared the inconvenience or difficulty of recovering the amount paid in excess of the amount finally determined*. Any Government, person or corporation wishing to enjoy this facility must make the objection within six weeks of the service of Form H on that Government, person or corporation ... (Emphasis added.)

[54] Therefore, we are of the considered opinion and we agree with the first respondent that the intent and purpose of s 29A is that it only acts as a form of security, in order to ensure that there are readily available monies, amounting to at least 25% of the award to be refunded in the event of a reduction of the award, thereby sparing the acquiring authority the inconvenience or difficulty in recovering up to at least 25% of the award.

[55] Based on the reasons enumerated above, we find that there is nothing in s 29A of the LAA to limit the jurisdiction of the court that limits the amount of adequate compensation to be given to the affected landowner. The land reference court has the jurisdiction to reduce the award by more than what was withheld under s 29A of the LAA, ie 25% of the award.

[56] Indeed, the appellant had conceded in para 44 of the appellant's submission in reply dated 5 October 2021 that '... s 29A of the LAA does not

restrict the High Court's power to determine the fair and just amount of compensation payable for the acquisition of land ...'. A

[57] With regard to issue (b), that is, whether the land reference court has the jurisdiction to direct that the amount reduced which exceeds the sum withheld, ie the excess sum and/or interest thereon be refunded by the appellant to the first respondent, our answer is in the positive. B

[58] In the present appeal, the award was RM240,305,083.33. 75% of the award, amounting to RM180,228,812.50 was paid to the appellant on 13 July 2017. The sum of RM60,076,270.83 or 25% has been withheld pursuant to s 29A of the LAA until the matter of compensation is fully determined by the High Court. C

[59] On 6 February 2020, the learned JC had reduced the award by RM73,940,025.28. After deducting the 25% that had been withheld, the issue now is whether the excess sum of RM13,863,754.45 and/or interest thereon be refunded by the appellant to the first respondent. D

[60] We are of the considered opinion that the learned JC has the jurisdiction to order the refund of the excess sum of RM13,863,754.45 and/or interest to the first respondent under s 31 of the LAA, which reads: E

> *31 Payment in error, etc.*
>
> *Any person who may have received the whole or any part of any compensation awarded for an interest in any scheduled land or under Part VII either in error or before it has been established that another person is rightfully entitled to such interest shall be liable, on demand by the land administrator, to refund the amount received or to pay it to the person entitled thereto* within three months or such longer period as the land administrator may specify in his demand. (Emphasis added.) F G

[61] In view of the decision made by the learned JC that the amount of the award by the PTG be reduced by RM73,940,025.28, it is clear that the award of the PTG was made 'in error', and therefore the first respondent is entitled to the refund of the excess sum and/or interest. In *Yakin Tenggara Sdn Bhd v RHB Bank Bhd & Ors and other appeals* [2017] 2 MLJ 774 at p 89, this court has referred to *Malacca Malay Guru2 Co-operative Thrift & Loan Society Ltd v Tan Mei Hua & Ors* [1971] 1 MLJ 107 which held as follows: H

> On the reversal of a judgment, the law raises an obligation on the party to the record *who received the benefit of the erroneous judgment to make restitution to the other party for what he had lost and that it is the duty of the court to enforce that obligation* ... I
>
> The underlying principle is that when the main judgment or order is varied or reversed, all orders consequential or depending upon it are affected and *wrongs done under them have to be righted by granting restitution*. (Emphasis added.)

[62] Added to that, it had been established from the decision of the learned JC to reduce the award that it is the first respondent, not the appellant, who is therefore entitled to the excess sum. The order to refund the excess sum is the natural consequence of the decision of the learned JC. As such, we do not agree with the submission of the appellant that the first respondent should initiate further legal actions to recoup the excess sum from the appellant.

[63] In *Emasin Resources Sdn Bhd v Pentadbir Tanah Port Dickson* [2018] 4 MLJ 816, this court had affirmed the decision of the High Court which had ordered the appellant to return the compensation for injurious affection which had been set aside.

Issue (iii): Procedural compliance

[64] The complaint on procedural impropriety on part of the learned JC is directed against the following findings of the learned JC in her GOJ:

> I will state that the assessors and I faced initial difficulty in choosing which comparable could be used to assess and calculate the amount that would best reflect the market value of the property. I engaged the assessors in discussion and critical analysis bearing in mind their reports contrasted with the other. We went through again thoroughly all the comparables used by the applicant and the respondents. We poured through the similarities and the contrasting features of each of the comparables and we considered the adjustments that ought to be given for the comparable which we felt was fair and most suitable to be made. Their opinion and insight into the assessment of the properties compared were invaluable and most helpful to me.
>
> Having said so I reminded myself yet again that whilst I am not bound by the valuation and the opinion of the assessors, I did in the end of analysis found myself agreeing with their unanimous joint opinion and their reasons why the fourth comparable used by the JPPH in its valuation was the closest and most suitable when seen in the unique and distinctive features of the land albeit adjustments to be taken into account.
>
> In the end result I concurred with their unanimous opinion and I chose the fourth comparable ie Lot 43376, Mukim Ampang, Daerah Hulu Langat which I felt was the best and closest in comparison to the scheduled land. Adjustments of course had to be made in my acknowledgment that valuation of land is not a matter which is capable of precise and exact computation.

[65] Based on the above excerpts of the GOJ, it is the submission of the appellant that whilst the learned JC did not agree with the written opinion of both the assessors in favouring the first respondent's first and third comparables, the learned JC nevertheless proceeded to 'put the assessors to further work', where the assessors then re-evaluated their opinion and decided to choose a comparable which is diametrically different from their initial

options. The learned JC then 'concurred' with them. This according to the appellant, clearly showed that the process adopted by the learned JC shows clearly that she did not exercise an independent mind to judiciously determine the issues in the matter.

[66] the appellant also relied on Arahan Amalan Hakim Besar Malaya Bil 1 Tahun 2017 ('Arahan Amalan 1/2017'), inter alia, which reads as follows:

> (3) Pandangan pengapit hendaklah direkodkan oleh Hakim. Hakim bertanggungjawab untuk menimbangkan pandangan kedua-dua pengapit. Hakim hendaklah membuat pertimbangannya sendiri (*exercise his mind*) dalam menentukan amaun pampasan yang wajar diawardkan berdasarkan peruntukan Akta 486.
>
> (4) Peruntukan subseksyen 36(4) Akta 486 hendaklah dipatuhi sepenuhnya. Hakim tidak terikat untuk bersetuju dengan pandangan-pandangan pengapit. Jika wujud perbezaan pendapat antara pengapit-pengapit, Hakim boleh memilih untuk menimbangkan pandangan pengapit yang pada hematnya lebih sesuai dalam keadaan kes itu. Hakim juga bebas untuk tidak menyetujui pandangan mana-mana pengapit, dan berkuasa untuk memutuskan amaun pampasan munasabah yang wajar diawardkan kepada perayu dengan menyatakan sebab-sebab dia berbuat demikian dalam penghakiman bertulisnya.

[67] The Arahan Amalan 1/2017 essentially prescribes that the judge shall not be bound by the assessors' opinions and in the event of any disagreement between the assessors, the judge may elect to consider which of the two opinions is appropriate and is also at liberty to depart from the two opinions and decide on his own by giving reasons for so doing.

[68] It is therefore the submission of the appellant that the manner in which the learned JC in re-engaging the assessors after receiving their written opinions and later concurring with their diametrically different views, departed significantly from the guidelines established by the case of *Semenyih Jaya*.

[69] The role of assessors was explained by the Federal Court in *Semenyih Jaya* to be as follows:

> [117] In this new provision, the assessors are expected to listen to the proceedings and evaluate the evidence. They may also be required to answer any questions of fact within their competence, consonant with their role as advisors under sub-s 40(2) of the Act.
>
> [118] At the end of the proceedings, they are required to give their opinion as to the appropriate amount of compensation to be awarded in a particular case.
>
> [119] At the conclusion of the proceedings, it is requisite under s 40C of the Act that they put their opinion in writing as to the appropriate amount of compensation to be awarded in a particular case.

A [120] It is then for the judge and the judge alone to deliberate on the issue of quantum before him, after taking into account all the issues.

[121] In so doing, it is not uncommon for the judge to give weight to the opinion of the assessors, for as experts in valuation of property, their opinion stand persuasively to be considered by the judge.

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[122] However, the assessors have no more role as soon as they put their opinion in writing. At the risk of tedium, it bears repeating that it is for the judge and the judge alone to exercise his mind and determine the issues before him, based on the advice given by the assessors.

C [123] It is reiterated that the opinion of the assessors is not binding on the judge. In the event the assessors disagree (as between themselves regarding the amount of compensation to be awarded in a particular case), the judge may, after considering both opinions, elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. However, he is not bound by either one of the D opinions. Should the judge finds himself in disagreement with the opinion of both the assessors, he is at liberty to decide the matter, giving his reasons for so doing.

[70] In the concluding portion of its judgment, the Federal Court made the following orders:

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[224] ... It is ordered that:

(a) by s 40A, the matters are to be heard before a single judge. The court shall appoint two assessors to assist the judge in determining the objection made by the appellants against the amount of compensation awarded by F the land administrator;

(b) at the end of the proceedings, the assessors are required to give their opinions in writing as to the appropriate amount of compensation to be awarded in this case pursuant to s 40C of the Act. The assessors must give due consideration to all the heads of compensation claimed by the G appellant under the Act;

(c) the opinion of the assessors are to be recorded by the judge. The judge has a duty to consider both of the opinions of the assessors. The judge is to exercise his mind in determining the amount of compensation to be awarded to the appellant, based on the principle of equivalence; and

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(d) the provisions of sub-s 36(4) of the Act are to be given full effect. The judge shall not be bound to conform to the opinions of the assessors. In the event of any disagreement between the assessors with regard to the amount of compensation, the judge may elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. I The judge is also at liberty to depart from the opinion of either of the assessors and decide on the reasonable amount of compensation to be awarded to the appellant by giving reasons for so doing.

[71] We are of the considered opinion and we agree with the first respondent

that neither *Semenyih Jaya* nor the Arahan Amalan 1/2017 cited by the appellant, specifically addresses the factual matrix of the present appeal, wherein the learned JC, having scrutinised the assessors' written opinion, requires further assistance from the assessors to answer the learned JC's doubts/questions which are within the assessors' expertise, prior to making her own decision.

[72] It needs to be reiterated that the principle set out in *Semenyih Jaya* and the purpose of the Arahan Amalan 1/2017 is to ensure that the land reference judge exercises his/her independent judgment to determine the adequate compensation by having the liberty to agree and/or disagree with the assessors who play the 'advisory/assisting' roles.

[73] There is nothing in both the *Semenyih Jaya* case and the Arahan Amalan 1/2017 that prohibits the land reference judge from engaging or re-engaging the assessors in a thorough and critical analysis of the comparables, in order to determine the most suitable comparable, bearing in mind that land reference judges are not expert valuers and must always give due deference to the opinions of the assessors, who are experts in the field of land valuation.

[74] In the present appeal, we find that the learned JC had in fact exercised her independent judgment in determining the adequate compensation. After scrutinising the assessors' written opinions, the learned JC had concurred with the assessors that the award was excessive but found that none of the comparables used by the applicant and the respondent 'matched perfectly' in every aspect of the said land.

[75] Having faced difficulty in choosing the best comparable, it is indeed prudent for the learned JC to seek the assessors' assistance by engaging them in a thorough and critical analysis of the comparables to determine the most suitable comparable, in light of the assessors' expertise in land valuation/suitability of comparables. This is reflected in the following excerpt of the GOJ:

> *I will state that the assessors and I faced initial difficulty in choosing which comparable could be used to assess and calculate the amount that would best reflect the market value of the property. I engaged the assessors in discussion and critical analysis bearing in mind their reports contrasted with the other. We went through again thoroughly all the comparables used by the applicant and the respondents*. We poured through the similarities and the contrasting features of each of the comparables and we considered the adjustments that ought to be given for the comparable which we felt was fair and most suitable to be made. *Their opinion and insight into the assessment of the properties compared were invaluable and most helpful to me*. (Emphasis added.)

[76] Indeed, we find that the learned JC had exercised her independent judgment in arriving at the decision, as she had repeatedly reminded herself that she was not bound by the assessors' opinion:

> ...while *I am not bound to conform to the opinion of my assessors*... (see para 1/pg 19 GOJ)
>
> Having said so I reminded myself yet again that whilst *I am not bound by the valuation and the opinion of the assessors*... (see para 3/pg 19 GOJ)

[77] In the final analysis, we are of the considered opinion that the learned JC had made her independent decision in determining the issue of final quantum of compensation:

> ... *I reminded myself yet again that whilst I am not bound by the valuation and the opinion of the assessors, I did in the end of analysis found myself agreeing with their unanimous joint opinion* and their reasons ...' (see para 3/pg 19 GOJ)
>
> *In the end result I concurred with their unanimous opinion* and I chose the fourth comparable ie Lot 43376, Mukim Ampang, Daerah Hulu Langat *which I felt was the best and closest in comparison to the scheduled land.* Adjustments of course had to be made in my acknowledgment that valuation of land is not a matter which is capable of precise and exact computation' (para 1/pg 20 GOJ)
>
> Therefore, after having heard the oral submissions of all the parties and having read the written submissions by learned counsels, the relevant valuation reports, the assessors' reports and the Bundle of Documents filed in this case ... *I am undoubtedly in agreement with their view that the compensation awarded by the land administrator is excessive* and seems to be not in conformity with the fact that the subject property is in an undeveloped hilly forest area. (para 1/pg 19 GOJ)

[78] As such, we are of the considered opinion and we agree with the first respondent that the appellant's contention that the learned JC had allowed her judicial discretion to be fettered by the assessors is clearly misconceived and without any legal basis.

Issue (iv): Development potential

[79] It is the submission of the appellant that the learned JC had failed to give proper regard to the development potentiality of the said land, as required under para 1(2BA) of the First Schedule of the LAA and the principle of equivalence as established by the Federal Court in *Semenyih Jaya*. This, according to the appellant, amounts to a plain error of law and that whilst determination of development potential requires an examination of the given facts, it has to be based on the correct criteria in law. Therefore, the appellant contends that this is a question of mixed law and fact.

[80] However, we are of the considered opinion that the Federal Court in

Nusantara Daya had already decided that the issue of development potential is not a question of law and is therefore, non-appealable in the first place:

> [109] *We also do not see any distinction when it comes to the complaint concerning the development potential*. The learned Judge had concluded that no adjustment needed to be made for this factor on the ground that such potential development value had already been factored into the transacted value of comparable 1. *We cannot see how this complaint amounts to a question of law; at worse, it may be a wrong appreciation of the evidence* (Emphasis added.)

Issue (v): Breach of natural justice

[81] It is the submission of the appellant that the principle on a breach of natural justice occurs when a decision is made against an aggrieved party on a point without affording the party an opportunity to contest the said point by adducing relevant evidence. Therefore, if a point is taken up by the court on its own and decided without having the said point put to all parties to comment and to lead evidence on, then that decision is made in breach of natural justice and is liable to be set aside.

[82] In the present case, the appellant had submitted that there were three instances where the learned JC's decision was made in breach of natural justice, vis a vis, the appellant:

(a) breach of natural justice in the adversarial scheme under the Third Schedule to the LAA;

(b) breach of natural justice where the learned JC decided without any evidential basis that larger parcels of land are worth less than smaller parcels; and

(c) breach of natural justice where the learned JC made adjustments to the comparable chosen more than what the applicant/LLM had asked for.

[83] We are of the considered opinion and we agree with the LLM that whilst this ground of appeal is posed ostensibly as a question of law, the issues raised therein are, in pith and substance, appeals on the quantum of compensation, ie on market value/comparable. Therefore, we agree with the LLM that this ground of appeal is nothing more than a 'backdoor attempt' to circumvent s 49(1) of the LAA.

[84] In any event, the appellant's complaint herein, vis a vis, the learned JC's ultimate reliance on JPPH's fourth comparable and adjustments made thereto, is misconceived and untenable, as the learned JC is judicially mandated to decide on the best comparable and to make any deductions/adjustments thereto based on the evidence adduced.

[85] In *Nusantara Daya*, the Federal Court held that it is the duty of the High Court judge to make any deductions/adjustments thereto based on the evidence adduced:

> [83] *We agree with the submissions of the appellant that the respondent's complaints relate solely and ultimately to the amount or inadequacy of compensation by reason of the deductions and adjustments made by the learned judge, a methodology and exercise that a High Court judge, sitting as the land reference court is perfectly entitled to undertake in order to determine the market value of the scheduled land*. In fact, that is precisely the exercise required of the High Court under Act 486. The market value of any land is not a matter of say so but is subject to proof by evidence and according to the principles for determining compensation as statutorily provided in the First Schedule to Act 486. Those principles have been carefully prescribed so that adequate compensation under art 13 of the Federal Constitution may be determined. (Emphasis added.)

[86] In *Amitabha Guha*, the Federal Court held that the judge is vested with the discretionary power to consider and decide on the comparable(s) most suited in the land reference proceedings:

> [55] At any rate, *question 1 is really a question relating to a decision of the High Court on compensation*; accordingly, the decision is final and there shall be no further appeal on this matter: ss 40D(3) and 49 of the LAA 1960. There is nothing in the appeal record to indicate that the learned judge or the assessors have committed any error of law or in fact — in not properly considering the evidence and/or in failing to apply the principles relating to the determination of compensation. *It will be recalled that the appellants' stand is that the Court of Appeal should have accepted JLW acquisition comparable 3 as a suitable comparable and that as such, the Court of Appeal should have remitted the matter back to the High Court for re-assessment on the basis of both sale and acquisition comparables. We think that argument is misconceived as it detracts from the underlying independence and impartiality of the assessors and the judge in land reference proceedings. It is for the assessors in their professional assessment and judgment to decide as to the suitability of the comparables for the purposes of determination of the market value. Similarly, the judge is vested with the discretionary power to consider and decide on the comparable(s) most suited for this exercise.* We do not think that it is for this court to exercise our judgment on this matter and direct the assessors and the judge to assess the market value of the subject lands on the basis of both sale and acquisition comparables; that would amount to a fetter on their independence and impartiality. Ultimately, this is a matter which falls to be decided by the assessors and the judge. The ultimate decision is that of the judge and him alone. Accordingly, we decline to answer question 1. (Emphasis added.)

[87] With regard to the breach of natural justice in item (i), the appellant submitted that the learned JC's decision in relying on JPPH's fourth comparable, and the imposition of downward adjustments were therefore made in breach of natural justice, as the appellant was denied the opportunity to submit on the suitability of JPPH's comparables, in particular comparable 4.

[88] We find that such a submission is clearly misconceived. This is because JPPH's third and fourth comparables (ie Lot 2850 and Lot 43376) are in fact common comparables adopted by the appellant's valuer in its valuation report dated 21 March 2016, to which adjustments and comments were duly made by the said valuer.

[89] Added to that, in the appellant's submissions in the land reference proceedings, the appellant had in fact commented on JPPH's fourth comparable, inter alia:

> JPPH's fourth comparable
>
> JLW's adjustment of -20% for the planning status of the *State Government's Valuer's fourth comparable, Lot 43376,* is unjustified ... JLW has produced no evidence to show that this planning approval was renewed before or after its expiry.
>
> JLW's additional -15% deduction for size ... is unjustified because Lot 43376 ... is not a small lot. The *State Government's Valuer's* deduction of -20% adjustment for size in favour of this comparable is sufficient ...
>
> (see paras 64/65 of written submissions)
>
> ... this means that LLM cannot show that the *State Government's Valuer's* report does not represent a fair valuation of the subject property ... this is because the *State Government's Valuer's valuation* of the subject property formed the basis of the land administrator's views on the value of the acquired part of the subject property ...
>
> (see para 66/written submission)

[90] With regard to the breach of natural justice in item (ii), the appellant's complaint is that the learned JC had purportedly made a huge deduction of 30% for size to JPPH's fourth comparable on an *assumed basis* that the said land, being large in size, is worth less than smaller lots ('general principle').

[91] We are of the considered opinion that there is no basis for such a contention, as this court had accepted the general principle in the case of *Teguh Kemajuan Sdn Bhd v Pentadbir Tanah Daerah Kota Tinggi & Anor and other appeals* [2021] 3 MLJ 141:

> [51] ... it is trite law that larger area of land held under a single title will fetch a lower market value compares to smaller parcels of land.

[92] In any event, the appellant's own valuer, Laurelcap Sdn Bhd, had in its valuation report dated 21 March 2016, endorsed the said general principle:

> Size — The comparable 3 is *a smaller parcel of land and from scale of economy point of view, the rate on per square foot basis should be higher.* Hence, we have made a downward adjustment to 15% to reflect the difference in size between the two properties. (see p 260 of the report) (Emphasis added.)

[93] Added to that, we agree with the first respondent that the general principle has been sufficiently supported by evidence adduced in the land reference proceedings and the same had been duly considered by learned JC.

[94] With regard to breach of natural justice in item (iii), the appellant took the position that the learned JC had made adjustments to the comparable chosen more than what the first respondent had asked for. In particular, on the factors of time and topography, the learned JC had reduced the quantum of the award more than what LLM had claimed was excessive:

Factor	LLM's Proposed Adjustment	Court's Adjustment
Time:	+25%	+10%
Topography:	- 15%	- 20%

[95] We are of the considered opinion that there are no merits in such contention. It is trite law that the land reference court is not bound by the opinion of any of the parties' valuers, including the first respondent's valuer. In this regard, the Federal Court in *Nusantara Daya* held as follows:

> [110] We must add that the *High Court was not obliged to accept wholesale the opinion of the valuers, whether that of the respondent or by the appellant. The High Court is entitled to evaluate the opinions on value given and reach its own decision, as assisted by the assessors.* And, in this case, the assessors agreed with the learned judge in disregarding the development potential; making the separate deductions for location, access and layer; and in deducting for size. (Emphasis added.)

[96] Added to that, the 'percentage of adjustment' is a matter of valuation to be determined solely by the learned JC in the course of arriving at what the JC opines as 'adequate compensation'. In *Nusantara Daya*, the Federal Court held as follows:

> [91] Whichever way the factor is treated whether to increase or reduce the comparable market price, *this adjustment is ultimately a matter of valuation principle and the High Court, assisted by the two assessors who are licensed valuers, is entitled to make the 10% deduction* to comparable 1 in order to reach an award of adequate compensation. As mentioned before, *the appellate court must accommodate a divergence of opinion on the degree or percentage of adjustment which is a normal occurrence in any determination of compensation* ... (Emphasis added.)

[97] In any event, we are of the considered opinion that the learned JC had given her reasons behind the adjustments upon considering parties' submissions.

[98] Premised on the reasons enumerated above, we are of the considered opinion that the appellant's contention on multiple breaches of natural justice by the learned JC is clearly misconceived.

CROSS-APPEAL

[99] In the cross-appeal, the first respondent is seeking to vary the High Court Order dated 6 February 2020 in the following manner:

> ... the reasonable and fair amount of compensation for the acquisition of part of the Subject Lot is RM166,365,058.05 only and as such, the first respondent's award shall be reduced by RM73,940,025.28. *Consequently, the second respondent shall forthwith refund/return to the applicant, the excess sum amounting to RM13,863,754.45 and the interest thereon, at the rate of 5%pa from the date of payment of 75% of the award, ie 13 July 2017, to the date of full realisation*. (Emphasis added.)

[100] The cross-appeal is to vary the order of the High Court and to give effect to the decision of the learned JC.

[101] Based on the reasons enumerated in paras [46]–[63] above, we allow the cross-appeal and order that the excess sum together with interest to be refunded to the first respondent within thirty days from the decision of this court.

CONCLUSION

[102] In conclusion, and for the reasons enumerated above, we dismissed the appellant's appeal and allow the first respondent's cross-appeal with costs.

Appellant's appeal dismissed; first respondent cross-appeal allowed with costs.

Reported by Dzulqarnain Ab Fatar